
UTAH LABOR COMMISSION

MARK LEAVITT,

Petitioner,

vs.

**SOUTHERN UTAH UNIVERSITY and
WORKERS COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 04-0952

Mark Leavitt asks the Utah Labor Commission to review Administrative Law Judge Marlowe's dismissal of Mr. Leavitt's claim for benefits under the Utah Workers' Compensation Act Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On July 18, 2001, Mr. Leavitt filed his first claim for workers' compensation benefits against Southern Utah University and its insurance carrier, Workers Compensation Fund , (referred to jointly as "SUU" hereafter). In this claim, Mr. Leavitt alleged that he suffered back injuries when he slipped and fell while working for SUU on November 22, 1999. Judge Eblen held an evidentiary hearing on Mr. Leavitt's claim and then ruled on June 13, 2003, that Mr. Leavitt was entitled to payment of medical expenses but was not entitled to disability compensation. Judge Eblen's decision was subsequently affirmed by the Commission.

On October 27, 2004, Mr. Leavitt filed a second claim for benefits. This second claim was again based on the November 1999 accident at SUU, but alleged a neck injury. After holding an evidentiary hearing on Mr. Leavitt's second claim, Judge Marlowe dismissed the claim on the grounds it was barred by the legal doctrine of *res judicata*. Specifically, Judge Marlowe concluded that Mr. Leavitt should have raised the alleged neck injury as part of his first claim.

In requesting Commission review of Judge Marlowe's decision, Mr. Leavitt argues he did raise his neck injury as part of his first claim but the ALJ who presided over that claim failed to address the neck injury in her decision.

DISCUSSION AND CONCLUSION OF LAW

As noted in Judge Marlowe's decision, it is a general principle of litigation that the parties must present their entire controversy for resolution at one time. Parties are not permitted to present

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their claim in a piecemeal fashion. Based on the foregoing principle, Judge Marlowe concluded that Mr. Leavitt's alleged neck injury, which is the basis for this second claim, should have been submitted as part of Mr. Leavitt's first claim.

In challenging Judge Marlowe's decision, Mr. Leavitt contends he did include his neck injury as part of his first claim, but that the ALJ who presided over the first claim did not address that injury. However, even if Mr. Leavitt's assertion is correct, it does not entitle him to raise the neck injury again in this second proceeding. To the contrary, if Mr. Leavitt believed that the first ALJ's decision failed to properly address his alleged neck injury, he could have requested the Commission to review that issue.¹ Because he did not make such a request, he waived his right to further review of that issue and is precluded from raising the issue again in this proceeding.

ORDER

The Commission affirms Judge Marlowe's dismissal of Mr. Leavitt's claim for benefits for his neck injury allegedly caused by his work accident at SUU on November 22, 1999. It is so ordered.

Dated this 26th day of November, 2008.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

¹ The Commission notes that Mr. Leavitt did file a motion for review of the first ALJ's decision, but he did not allege in that motion for review that the ALJ had failed to address his claim of a neck injury.